BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

TERRI J. JACKSON)
Claimant)
VS.)
) Docket No. 234,073
CARTER PETROLEUM PRODUCTS Perpendent)
Respondent AND)
)
FARMLAND MUTUAL INSURANCE COMPANY)
Insurance Carrier)

ORDER

Claimant appealed the June 7, 1999 preliminary hearing Order entered by Administrative Law Judge Robert H. Foerschler.

Issues

This is a claim for a May 12, 1998 accident and alleged neck and bilateral shoulder injuries. After conducting a preliminary hearing on June 3, 1999, Judge Foerschler denied claimant's request for additional temporary total disability and medical benefits. In denying that request, the Judge found that (1) claimant had reached maximum medical improvement from the injuries that she sustained in the May 1998 accident and (2) claimant's present neck complaints were not related to that accident.

Claimant contends Judge Foerschler erred. She contends that she needs additional medical treatment including an MRI to determine if a staple used in repairing the right shoulder has loosened and has become lodged in her shoulder joint. Also, because of radicular symptoms that she is experiencing, she contends that she needs an MRI of her cervical spine. Finally, because of chronic impingement syndrome, she contends her left shoulder requires conservative treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

- 1. This is an appeal from a preliminary hearing Order. The Board's jurisdiction to review preliminary hearing findings is limited to the following issues, which are deemed jurisdictional.¹
 - (1) Did the worker sustain an accidental injury?
 - (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide both timely notice and written claim of the accidental injury?
 - (4) Is there any defense that goes to the compensability of the claim?

Additionally, the Appeals Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction or authority.²

- 2. The Judge did not exceed his jurisdiction or authority by finding that Ms. Jackson has reached maximum medical improvement from the injuries that she sustained in the May 1998 accident or by denying her request for additional benefits.
- 3. Ms. Jackson requests the Appeals Board to reconsider the evidence and find that she is both temporarily, totally disabled and in need of medical treatment. But because of the limits placed on its jurisdiction to review preliminary hearing findings, at this juncture of the proceeding the Appeals Board does not have the authority to reweigh the evidence and redecide those facts.
- 4. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.³
- 5. Because the preliminary findings that Ms. Jackson challenges are not reviewable at this time and finding that the Judge did not exceed his jurisdiction and authority, the Board concludes that it does not have the authority to review the June 7, 1999 preliminary hearing Order and that this appeal should be dismissed.

WHEREFORE, the Appeals Board dismisses the appeal leaving the Order entered by Judge Robert H. Foerschler on June 7, 1999, in full force and effect.

¹ K.S.A. 1999 Supp. 44-534a.

² K.S.A. 1999 Supp. 44-551.

³ K.S.A. 1999 Supp. 44-534a(a)(2).

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

c: Kathleen A. McNamara, Kansas City, MO John B. Rathmel, William G. Belden, Overland Park, KS Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director